NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

Editor's Note: The following Notices of Final Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1392.)

[R14-82]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable) — **Rulemaking Action**

Article 5	New Article
R4-23-501	New Section
R4-23-502	New Section
R4-23-503	New Section
R4-23-504	New Section
R4-23-505	New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. §§ 32-1904(A)(1) and 36-2602

Implementing statutes: A.R.S. §§ 36-2603, 36-2604, 36-2605, 36-2606, 36-2607, 36-2608, 36-2609, and 36-2610

3. The effective date of the rule:

August 2, 2014

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rule:

Notice of Expiration of Rules: 20 A.A.R. 133, January 17, 2014
Notice of Rulemaking Docket Opening: 20 A.A.R. 461, February 21, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 431, February 21, 2014

5. The agency's contact person who can answer questions about the rulemaking:

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

During the 48th Legislative Session, the Legislature passed H.B. 2136. The bill contained new statutes, including A.R.S. § 36-2602(A), which requires the Board to adopt rules establishing a controlled substances prescription monitoring program that includes a computerized central database tracking system to track the prescribing, dispensing, and consumption of Schedule II, III, and IV controlled substances that are dispensed by a medical practitioner or pharmacy that holds a valid license or permit issued under A.R.S. Title 32. The rules were made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008. Because of a mix up with the five-year review scheduled by the Governor's Regulatory Review Council for submission on August 30, 2013, the Board staff failed to meet the deadline and the rules were terminated as required by A.R.S. § 41-1056(J). The Notice of Expiration of Rules was published at 20

A.A.R. 133, January 17, 2014. The Board intends to make new rules to replace the expired rules to comply with H.B. 2136. The new rules will be placed in a new Article 5 (Controlled Substances Prescription Monitoring Program) with new Sections for: program registration and database access, requirements for data format and transmission, access to program data, computerized central database tracking system task force, and reports.

The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State.

The Board believes that approval of the rules benefits the public and the pharmacy and medical communities by establishing a central repository of all prescriptions dispensed for Schedule II, III, and IV controlled substances in Arizona. The program will improve the State's ability to identify controlled substance abusers or misusers and refer them to treatment, and to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study relevant to the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The new rules will impact the Board, medical practitioners, pharmacies, pharmacists, and the public. The new rule's impact on the Board will be the usual rulemaking-related costs, which are minimal. The Board estimates the cost of the program will be from $300,000 to $400,000 per year. The costs of the program will be borne by the Board through an annual appropriation of $395,795 from the Board's Pharmacy Fund. The Board will seek additional federal grants when available to help pay the costs of the program.

The Board estimates the new rules will have minimal to moderate economic impact on pharmacies or pharmacists. The cost to pharmacies will be to prepare and transmit the prescription data to the Board. The majority of pharmacies already transmit similar data in other states with a monitoring program. The few Arizona pharmacies that do not have a computer will be required to transmit the data through use of a universal claim form. There will be a cost in man-hours to manually prepare and transmit the data. The Board estimates this cost will be from $0 to $10 per day equaling an annual additional cost of from $0 to $2,600.

The Board estimates the new rules will have minimal to moderate economic impact on medical practitioners. Those medical practitioners who dispense Schedule II, III, and IV controlled substances to patients will be required to transmit prescription data to the Board. Those medical practitioners without computers will be required to manually transmit the data, which will require a staff person to complete a type of universal claim form. There will be a cost in man-hours to prepare and transmit the data. The Board estimates this additional cost may apply to approximately 2,000 of the estimated 30,000 medical practitioners licensed to practice medicine in Arizona. The Board estimates an average medical practice will need an additional one to two man-hours to process the prescription data at a cost of from $0 to $25 per day, equaling an additional annual cost of from $0 to $6,500.

The public, Board, and pharmacists benefit from rules that are clear, concise, and understandable. The Board rules benefit the public and the pharmacy and medical communities by establishing a central repository of all prescriptions dispensed for Schedule II, III, and IV controlled substances in Arizona. The program will improve the State's ability to identify controlled substance abusers or misusers and refer them to treatment, and to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no substantial changes in the final rules from the proposed rules. In R4-23-502(C), the words “as amended” are added to Health Insurance Portability and Accountability Act (HIPPA) of 1996." There are minor changes to style, format, grammar, and punctuation requested by GRRC staff.

11. An agency’s summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

A oral proceeding was held April 7, 2014. Janet Underwood representing the Arizona Community Pharmacy Committee attended the oral proceeding. Ms. Underwood provided written comment from The Arizona Community Pharmacy Committee voicing support for the rulemaking. No other comments were received.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule requires a registration for medical practitioners. The Board issues the specific registration required under A.R.S. § 36-2606, which arguably falls within the definition of general permit in A.R.S. §§ 41-1001 and 41-1037.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The agency has determined that there is no corresponding federal law. The agency complies with state law, specifically A.R.S. Tile 26, Chapter 28.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

Section

ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access

A. Under A.R.S. § 36-2606, a medical practitioner who is issued a license under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 21, 25, or 29 and possesses a current DEA registration under the Federal Controlled Substances Act shall have a current CSPMP registration issued by the Board.

B. Application.

1. An applicant for CSPMP registration shall:
   a. Submit a completed application for CSPMP registration electronically or manually on a form furnished by the Board, and
   b. Submit with the application form the documents specified in the application form.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

C. Registration. Within seven business days of receipt of a completed application specified in subsection (B), the Board office shall determine whether an application is complete. If the application is complete, the Board office shall issue a registration number and provide a current registration certificate to the applicant by mail or electronic transmission. If the application is incomplete, the Board office shall issue a written notice of incompleteness. An applicant with an incomplete application shall comply with the requirements of R4-23-202(F).

D. Registration renewal. As specified in A.R.S. § 36-2606(C), the Board shall automatically suspend the registration of any registrant that fails to renew the registration on or before May 1 of the year in which the renewal is due. The Board shall vacate a suspension if the registrant submits a renewal application. A suspended registrant with CSPMP database access credentials is prohibited from accessing information in the prescription monitoring program database.

E. CSPMP database access.

1. A medical practitioner that chooses to use the CSPMP database shall request access from the CSPMP Director by

completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the medical practitioner is in compliance with the registration requirements of this Section.

2. A pharmacist that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the pharmacist has a current active pharmacist license.
3. A medical practitioner or pharmacist who is not licensed in Arizona may request access from the CSPMP Director by:
   a. Completing an access user registration form electronically;
   b. Printing the access user registration form;
   c. Having the access user registration form signed and notarized; and
   d. Mailing the notarized access user form along with a current copy of the applicant's nonresident state license and driver's license. Upon receipt of the notarized access user registration form and other required documents, the CSPMP Director or designee shall issue access credentials provided the nonresident licensed medical practitioner or pharmacist credentials show an current active license in another state.

R4-23-502. Requirements for Data Format and Transmission

A. Each dispenser shall submit to the Board or its designee by electronic means information regarding each prescription dispensed for a controlled substance listed in Schedules II, III, and IV of A.R.S. Title 36, Chapter 27, the Arizona Uniform Controlled Substances Act. The information reported shall conform to the August 31, 2005 Version 003, Release 000 ASAP Rules-based Standard Implementation Guide for Prescription Monitoring Programs published by the American Society for Automation in Pharmacy as specified in A.R.S. § 36-2608(B). The information submitted for each prescription shall include:
1. The name, address, telephone number, prescription number, and DEA registration number of the dispenser;
2. The name, address, gender, date of birth, and telephone number of the person or, if for an animal, the owner of the animal for whom the prescription is written;
3. The name, address, telephone number, and DEA registration number of the prescribing medical practitioner;
4. The quantity and National Drug Code (NDC) number of the Schedule II, III, or IV controlled substance dispensed;
5. The date the prescription was dispensed;
6. The number of refills, if any, authorized by the medical practitioner;
7. The date the prescription was issued;
8. The method of payment identified as cash or third party; and
9. Whether the prescription is new or a refill.

B. A dispenser shall submit the required information electronically unless the Board or its designee approves a waiver as specified in subsection (D).

C. A dispenser's electronic data transfer equipment including hardware, software, and internet connections shall meet the privacy and security standards of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:
1. Data shall be at least 128-bit encryption in transmission and at rest; and
2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer Protocol (FTP), Virtual Private Network (VPN), or other Board-approved media.

D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.

E. Unless otherwise approved by the Board, a dispenser shall report by the close of business on each Friday the required information for the previous week, Sunday through Saturday. If a Friday falls on a state holiday, the dispenser shall report the information on the following business day. The Board or its designee may approve a less frequent reporting period if a dispenser makes a showing that a less frequent reporting period will not reduce the effectiveness of the system or jeopardize the public health.

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data

A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.

B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.

C. The Board or its designee is authorized to release data collected by the program to the following:

1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;
2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;
3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;
4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;
5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;
6. A person serving a lawful order of a court of competent jurisdiction;
7. A person who is authorized to prescribe or dispense a controlled substance and who performs an evaluation on an individual under A.R.S. § 23-1026; and
8. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.

D. The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

R4-23-504. Computerized Central Database Tracking System Task Force

A. The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.

B. The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.

C. The Task Force shall determine:
1. The information to be screened;
2. The frequency and thresholds for screening; and
3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.

D. The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

R4-23-505. Reports

A. Before releasing prescription monitoring program data, the Board or its designee shall receive a written or electronic request for controlled substance prescription information.

B. A person authorized to access CSPMP data under R4-23-503(C)(1) through (7) shall submit a written or electronic request that:
1. Specifies the information requested for the report;
2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;
3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued photo identification;
4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;
5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;
6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and
7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.

C. The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

[R14-83]

1. Articles, Parts, or Sections Affected (as applicable) — **Rulemaking Action**

R4-23-110	Amend
R4-23-205	Amend
R4-23-602	Amend
R4-23-603	Amend
R4-23-606	Amend
R4-23-692	Amend
R4-23-693	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 32-1904(A)(1), (2), (3), and (4) and 32-1904(B)(1) and (3).

Implementing statute: A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1933, and 32-1977.

3. The effective date of the rule:

August 2, 2014

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening, 19 A.A.R. 4185, December 20, 2013
Notice of Proposed Rulemaking, 20 A.A.R. 158, January 24, 2014

5. The agency's contact person who can answer questions about the rulemaking:

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Phoenix, AZ 85007

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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The results from the 2013 auditor's review from the State of Arizona Office of the Auditor General recommended the Board should ensure all applicants for permits meet the permit requirements, and the Board should track its' compliance with statutorily required time-frames for issuing permits. In consultation with the Board's attorney, Board staff did an extensive review of all application and permit processes. In addition, the Board recently added an online link that allows for electronic application and permit renewal submission for permittees. As a result, the Board has determined that several sections of the rules need to be amended to update the application and documentation requirements for the issuance of a permit, and the time-frames for application processes.

In 2013 durable medical equipment was added to the compressed medical gas supplier permit in A.R.S. § 32-1930(A)(4), and to the compressed medical gas supplier biennial fee requirements in A.R.S. § 32-1931(D)(9). The Board has determined that durable medical equipment needs to be defined and rules added to support the statute changes.

This rulemaking will amend the permit application and time-frame section that applies to all applicants for a pharmacy permit, manufacturer permit, wholesaler permit, nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit. This rulemaking will also amend Sections specific to resident nonprescription drug permittees, resident pharmacy permittees, compressed medical gas distributor permittees, and durable medical equipment and compressed medical gas supplier permittees.

In this rulemaking, new subsections on notification to the Board, change of ownership, relocation, facility standards, and other permittee requirements will be added to make all permittee sections consistent where applicable. In addition, citations to statutes and rules will be amended or added where applicable, and language amended to make the rules more clear and concise.

The rulemaking will amend R4-23-110 Definitions by adding a definition for durable medical equipment to support changes to R4-23-693.

The rulemaking will amend R4-23-205 Fees by adding that vendor permit fees are prorated according to A.R.S. § 32-1931(B), and adding durable medical equipment to the compressed medical gas supplier fee. Those references are in R4-23-205(D).

The rulemaking will amend R4-23-602 Permit Application Process and Time-frames by adding the requirements for the electronic application process. Those references are in R4-23-602(A). The rulemaking will amend the receipt of application subsection by including an electronic as well as manual process for date-stamping the application form. Those references are in R4-23-602(B). The rulemaking will renumber and incorporate subsections (D) through (H) into subsection (C). The rulemaking will amend the time-frame requirements for administrative reviews and incomplete applications to be consistent with the time-frame requirements in place for licensees. The rulemaking will add the compressed medical gas distributor permit and the durable medical equipment and compressed medical gas supplier permit to the permits that will be issued by the Board office after an administratively complete application form is received. Those references are in R4-23-602(C). The rulemaking will add a new subsection for permit renewals as specified in A.R.S. § 32-1931 (A) and (G). Those references are in R4-23-602(D). The rulemaking will add a new subsection for the display of a permit as specified in A.R.S. 32-1933(A). Those references are in R4-23-602(E).

The rulemaking will amend R4-23-603 Nonprescription Drugs, Retail by adding "resident" in the section header. The rulemaking will add the citation to the application process in R4-23-602, identify documentation to be provided with the application, and delete subsections that reference the basic information asked on the application form. Those references are in R4-23-603(C). The rulemaking will add the requirement that drugs are to be received from a supplier with a current Board-issued permit as specified in R4-23-601(A). Those references are in R4-23-603(F). The rulemaking will add a new subsection for notification to the Board office of changes in contact information of the permittee. Those references are in R4-23-603(G). The rulemaking will add a new subsection for change of ownership that requires a new permit as specified in A.R.S. § 32-1931(F). Those references are in R4-23-603(H). The rulemaking will add a new subsection for the application process due to relocation of the permittee. Those references are in R4-23-603(I). The rulemaking will add a new subsection for recordkeeping as required in R4-23-601, and for recordkeeping due to A.R.S. § 32-1977 if methamphetamine precursors are sold. Those references are in R4-23-603(J). The rulemaking will add a new subsection for permit renewals as in R4-23-602. Those references are in R4-23-603(K). The rulemaking will move subsection (G) the vending machine outlet subsection to (L), will remove the permit expiration date from the identification seal documentation, and will prohibit the sale of precursor chemicals or regulated chemicals in a vending machine due to the requirements of A.R.S. § 32-1977. Those references are in R4-23-603(L).

The rulemaking will amend R4-23-606 Pharmacy Permit: Community, Hospital, and Limited Service by adding "resident" in the section header. The rulemaking will add the citation to the application process in R4-23-602, identify the documentation to be provided with the application including a disclosure statement if a medical practitioner receives compensation as specified in A.R.S. § 32-1930(B), and delete the subsections that reference the basic information asked on the application form. Those references are in R4-23-606(B). The rulemaking will amend the notification subsection by adding that notification is to be within ten days, identifying information to be reported to the Board office, and adding the immediate notification requirement of a change of pharmacist in charge as specified in R4-23-608. Those references are in R4-23-606(C). The rulemaking will correct the citation to a nonprescription drug permit. Those references are in R4-23-606(D). The rulemaking will amend the language in the change of ownership subsection to be consistent with other change of ownership subsections in rule. Those references are in R4-23-606(E). The rulemaking will amend the relocation and remodel subsection to include the application for relocation or remodel, application to be provided no less than 30 days prior to relocation or remodel, and identifies the documentation to be provided with the application. Those references are in R4-23-606(F). The rulemaking will remove the requirement to provide an application for the change of officers in a corporation, and will replace the provision with the permit renewal requirement as specified in R4-23-602. Those references are in R4-23-606(G).

The rulemaking will amend R4-23-692 Compressed Medical Gas Distributor by adding "resident or nonresident" in the section header. The rulemaking will add nonresident permit requirements, and delete the requirement to file an amended application for changes in compressed medical gases distributed. Those references are in R4-23-692(A). The rulemaking will move the current subsections (B) through (D) and will add a new subsection (B) for applications that identifies the documentation to be provided with the application. Those references are in R4-23-692(B). The rulemaking will add a new subsection for notification to the Board office for changes in contact information. Those references are in R4-23-692(C). The rulemaking will add a new subsection for change of ownership that requires a new permit as specified in A.R.S. § 32-1931(F). Those references are in R4-23-692(D). The rulemaking will add a new subsection for relocation requirements. Those references are in R4-23-692(E). The rulemaking will move the previous subsection (A)(4) for the sale or distribution of a medical gas as specified in A.R.S. § 32-1901(9). Those references are in R4-23-692(F). The rulemaking will add a new subsection for facility requirements. Those references are in R4-23-692(G). The rulemaking moves the previous subsection (B) Current Good Manufacturing Practice to

new subsection (H) and updates to the most current revision of the incorporated by reference material. Those references are in R4-23-692(H). The rulemaking moves the previous subsection (C) Records to new subsection (I), and updates the recordkeeping to the requirements of R4-23-601. Those references are in R4-23-692(I). The rulemaking moves the previous subsection (D) Inspection to new subsection (J), and adds the requirement for nonresident permittees to provide resident licensing authority inspection reports on request, and provides for on-site inspections of nonresident permittees as specified in A.R.S. § 32-1904. Those references are in R4-23-692(J). The rulemaking will add a new subsection for permit renewals as in R4-23-602. Those references are in R4-23-692(K). The rulemaking will add a provision that Section R4-23-692 does not prohibit the emergency administration of oxygen by proper emergency personnel. Those references are in R4-23-692(L).

The rulemaking will amend R4-23-693 Compressed Medical Gas Supplier by adding "durable medical equipment" in the section header. The rulemaking will delete current subsection (A), add a new subsection revising the permit requirements and add durable medical equipment and nonresident permits. Those references are in R4-23-693(A). The rulemaking will move the current subsections (B) and (C), and will add a new subsection (B) for applications that identifies the documentation to be provided with the application. Those references are in R4-23-693(B). The rulemaking will add a new subsection for notification to the Board office for changes in contact information. Those references are in R4-23-693(C). The rulemaking will add a new subsection for change of ownership that requires a new permit as specified in A.R.S. § 32-1931(F). Those references are in R4-23-693(D). The rulemaking will add a new subsection for relocation requirements. Those references are in R4-23-693(E). The rulemaking will add a new subsection for orders for prescription-only devices and compressed medical gases as specified in A.R.S. § 32-1901(10). Those references are in R4-23-693(F). The rulemaking will add a new subsection for restrictions of the permit. Those references are in R4-23-693(G). The rulemaking will add a new subsection for facility requirements. Those references are in R4-23-693(H). The rulemaking will move previous Permit subsection (A)(4) to (I). Those references are in R4-23-693(I). The rulemaking moves the previous subsection (B) Records to new subsection (J), and updates the recordkeeping to the requirements of R4-23-601. Those references are in R4-23-693(J). The rulemaking moves the previous subsection (C) Inspection to new subsection (K), and adds the requirement for nonresident permittees to provide resident licensing authority inspection reports on request, and provides for on-site inspections of nonresident permittees as specified in A.R.S. § 32-1904. Those references are in R4-23-693(K). The rulemaking will add a new subsection for permit renewals as in R4-23-602. Those references are in R4-23-693(L). The rulemaking will add a provision that Section R4-23-693 does not prohibit the emergency administration of oxygen by proper emergency personnel. Those references are in R4-23-693(M).

The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its' evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study relevant to the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

The amended rules will impact the Board, pharmacies, manufacturers, wholesalers, nonprescription drug permittees, compressed medical gas distributors, and durable medical equipment and compressed medical gas suppliers. The impact on the Board due to the amended rules will be the usual rulemaking-related costs, and the administrative-related costs to issue additional permits, which are minimal. The Board estimates an average of 20 new durable medical equipment and compressed medical gas supplier permits will be issued per month resulting in an increase in annual revenues of $24,000, which is substantial.

The Board estimates the amended rules will have minimal economic impact on pharmacies, manufacturers, wholesalers, nonprescription drug permittees, compressed medical gas distributors, and durable medical equipment and compressed medical gas suppliers. The rulemaking reflects current application and renewal processes, recordkeeping, and processes for changes in the permit such as ownership, location, and contact information already in place with the Board. Applicants that do not submit a completed application within the time-frames set out in rule will have to submit a new form and fee to continue with the permit process.

For those applicants that sell, lease, or supply durable medical equipment to patients in a home or residence, the biennial fee for the permit is $100.

The Board believes that approval of the rules benefits the public, Board, pharmacies, manufacturers, wholesalers, nonprescription drug permittees, compressed medical gas distributors, and durable medical equipment and compressed medical gas suppliers by establishing clear standards for application time-frames, application and renewal processes, recordkeeping, and processes for changes to the permit such as location, ownership, and contact information.

We could not find a less intrusive or less costly alternative method to achieve the final rulemaking. The method we chose imposes minimal costs on the agency and permittees. The only alternative available is to not do the rulemaking,

which would leave outdated permit application processes in rule, and would not provide rules for the provision of durable medical equipment.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Minor clarifications, grammar changes, and changes for consistency with statute were made at the request of GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

A public hearing was held on March 10, 2014. No one attended the public hearing. The Board received one written comment from Janet Underwood, representing The Arizona Community Pharmacy Committee, voicing support for the rulemaking. No other comments were received.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules require several permits. For nonprescription drug retailers, compressed medical gas distributors, and durable medical equipment and compressed medical gas suppliers, the Board issues the specific permits required under A.R.S. §§ 32-1929, 32-1930, and 32-1931, which arguably fall within the definition of general permit in A.R.S. §§ 41-1001 and 41-1037. For pharmacies, manufacturers, and wholesalers, the Board, after a public hearing, issues the specific permits required under A.R.S. §§ 32-1929, 32-1930, and 32-1931, which arguably fall within the exception in subsection (A)(2) of A.R.S. § 41-1037 as an alternative type of permit specifically authorized by state statute.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Yes, 21 CFR part 1314 is applicable for R4-23-603(J). The rule contains the requirements of A.R.S. § 32-1977 which has provisions that are more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

21 CFR part 210 and 21 CFR part 211, April 1, 2013 in R4-23-692(H).

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 2. PHARMACIST LICENSURE

Section
R4-23-205. Fees

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-602. Permit Application Process and Time-frames
R4-23-603. Resident-Nonprescription, Drugs, Retail
R4-23-606. Resident-Pharmacy Permit~~,~~: Community, Hospital, and Limited Service
R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident

R4-23-693. ~~Compressed Medical Gas Supplier~~ Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to 4 A.A.C. 23:

"Active ingredient" No change

"AHCCCS" No change

"Annual family income" No change

"Approved course in pharmacy law" No change

"Approved Provider" No change

"Assisted living facility" No change

"Authentication of product history" No change

"Automated dispensing system" No change

"Automated storage and distribution system" No change

"Batch" No change

"Beyond-use date" No change

"Biological safety cabinet" No change

"Care-giver" No change

"Community pharmacy" No change

"Component" No change

"Compounding and dispensing counter" No change

"Computer system" No change

"Computer system audit" No change

"Contact hour" No change

"Container" No change

"Continuing education" No change

"Continuing education activity" No change

"Continuing education unit" or "CEU" No change

"Continuous quality assurance program" or "CQA program" No change

"Correctional facility" No change

"CRT" No change

"CSPMP" No change

"Current good compounding practices" No change

"Current good manufacturing practice" No change

"Cytotoxic" No change

"Day" No change

"DEA" No change

"Declared disaster areas" No change

"Delinquent license" No change

"Dietary supplement" No change

"Digital signature" No change

"Dispensing pharmacist" No change

"Drug sample" No change

"Durable medical equipment" or "DME" means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901(75). DME includes:

Air-fluidized beds,

Apnea monitors,
Blood glucose monitors and diabetic testing strips,
Continuous Positive Airway Pressure (CPAP) machines,
Electronic and computerized wheelchairs and seating systems,
Feeding pumps,
Home phototherapy devices,
Hospital beds,
Infusion pumps,
Medical oxygen and oxygen delivery systems excluding compressed medical gases,
Nebulizers,
Respiratory disease management devices,
Sequential compression devices,
Transcutaneous electrical nerve stimulation (TENS) unit, and
Ventilators.

"Earned income" No change
"Electronic signature" No change
"Eligible patient" No change
"Emergency drug supply unit" No change
"Extreme emergency" No change
"Family unit" No change
"FDA" No change
"Health care decision maker" No change
"Health care institution" No change
"Hospice inpatient facility" No change
"Immediate notice" No change
"Immunizations training program" No change
"Inactive ingredient" No change
"Internal test assessment" No change
"ISO Class 5 environment" No change
"ISO Class 7 environment" No change
"Licensed health care professional" No change
"Limited-service correctional pharmacy" No change
"Limited-service long-term care pharmacy" No change
"Limited-service mail-order pharmacy" No change
"Limited-service nuclear pharmacy" No change
"Limited-service pharmacy permittee" No change
"Limited-service sterile pharmaceutical products pharmacy" No change
"Long-term care consultant pharmacist" No change
"Long-term care facility" or "LTCF" No change
"Lot" No change
"Lot number" or "control number" No change
"Low-income subsidy" No change
"Materials approval unit" No change
"Mechanical counting device for a drug in solid, oral dosage form" No change
"Mechanical storage and counting device for a drug in solid, oral dosage form" No change
"Mediated instruction" No change

"Medical practitioner-patient relationship" No change
"Medicare" No change
"Medication error" No change
"Mobile pharmacy" No change
"MPJE" No change
"NABP" No change
"NABPLEX" No change
"NAPLEX" No change
"Order" No change
"Other designated personnel" No change
"Outpatient" No change
"Outpatient setting" No change
"Patient profile" No change
"Pharmaceutical patient care services" No change
"Pharmaceutical product" No change
"Pharmacy counter working area" No change
"Pharmacy law continuing education" No change
"Pharmacy permittee" No change
"Physician" No change
"Physician-in-charge" No change
"Poverty level" No change
"Precursor chemical" No change
"Prepackaged drug" No change
"Prep area" No change
"Primary care provider" No change
"Proprietor" No change
"Provider pharmacy" No change
"Radiopharmaceutical" No change
"Radiopharmaceutical quality assurance" No change
"Radiopharmaceutical services" No change
"Red C stamp" No change
"Refill" No change
"Regulated chemical" No change
"Remodel" No change
"Remote drug storage area" No change
"Resident" No change
"Responsible person" No change
"Score transfer" No change
"Security features" No change
"Shared order filling" No change
"Shared order processing" No change
"Shared services" No change
"Sight-readable" No change
"Single-drug audit" No change
"Single-drug usage report" No change
"Standard-risk sterile pharmaceutical product" No change
"State of emergency" No change

"Sterile pharmaceutical product" No change
"Strength" No change
"Substantial-risk sterile pharmaceutical product" No change
"Supervision" No change
"Supplying" No change
"Support personnel" No change
"Temporary pharmacy facility" No change
"Tourist" No change
"Transfill" No change
"Unearned income" No change
"Verified signature" or "signature verifying" No change
"Veteran" No change
"Wholesale distribution" No change
"Wholesale distributor" No change

ARTICLE 2. PHARMACIST LICENSURE

R4-23-205. Fees

A. Licensure fees:
1. Pharmacist:
   a. Initial licensure [Prorated according to A.R.S. § 32-1925(B)]: $180.
   b. Licensure renewal: $180.
2. Pharmacy or graduate intern. Initial licensure: $50.
3. Pharmacy technician:
   a. Initial licensure [~~prorated~~ Prorated according to A.R.S. § 32-1925(B)]: $72.
   b. Licensure renewal: $72.
4. Pharmacy technician trainee: $36.

B. Reciprocity fee: $300.
C. Application fee: $50.
D. Vendor permit fees (Resident and nonresident) [New permits prorated according to A.R.S. § 32-1931(B)]:
1. Pharmacy: $480 biennially (Including hospital, and limited service).
2. Drug wholesaler or manufacturer:
   a. Manufacturer: $1000 biennially.
   b. Full-service drug wholesaler: $1000 biennially.
   c. Nonprescription drug wholesaler: $500 biennially.
3. Drug packager or repackager: $1000 biennially.
4. Nonprescription drug, retail:
   a. Category I (30 or fewer items): $120 biennially.
   b. Category II (more than 30 items): $200 biennially.
5. Compressed medical gas distributor: $200 biennially.
6. ~~Compressed medical gas supplier~~ Durable medical equipment and compressed medical gas supplier: $100 biennially.

E. Other Fees:
1. Wall license.
   a. Pharmacist: $20.
   b. Pharmacy or graduate intern: $10.
   c. Pharmacy technician: $10.
   d. Pharmacy technician trainee: $10.
2. Duplicate of any Board-issued license, registration, certificate, or permit: $10.
3. Duplicate current renewal license: $10.

F. Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time-frames under R4-23-202 or R4-23-602.
G. Penalty fee. Renewal applications submitted after the expiration date are subject to penalty fees as provided in A.R.S. §§ 32-1925 and 32-1931.
1. Licensees: A fee equal to half the licensee's biennial licensure renewal fee under subsection (A) and not to exceed $350.
2. Permittees: A fee equal to half the permittee's biennial permit fee under subsection (D) and not to exceed $350.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-602. Permit Application Process and Time-frames

A. A person applying for a permit shall ~~submit to the Board Office an application packet consisting of~~:

1. ~~A~~ Submit a completed application ~~form~~ for the desired permit ~~signed by the applicant;~~ electronically or manually on a form furnished by the Board, and
2. ~~A cashier's, certified, business, or personal check, or money order for the applicable biennial permit fee; and~~ Submit with the application form:
   a. The documents specified in the application form, and
   b. The permit fee specified in R4-23-205(D).
3. ~~Other information or documents required by R4-23-603, R4-23-604, R4-23-605, R4-23-606, R4-23-607, or R4-23-671.~~

B. The Board ~~Office~~ office shall deem an application ~~packet received on the date that the Board Office stamps on the packet immediately upon receipt~~ form received on the date the Board office electronically or manually date-stamps the form.

C. ~~The Board office shall finish an administrative completeness review within 20 days from the date of receipt of an application packet.~~ Time-frames for permits.

1. The Board office shall finish an administrative completeness review within 60 days from the date the application form is received.
   ~~1.~~a. The Board ~~Office~~ office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application ~~packet~~ form.
   ~~2.~~b. If the application ~~packet~~ form is incomplete, the Board ~~Office~~ office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The ~~20~~ 60-day time-frame for the Board ~~Office~~ office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board ~~Office~~ office with all missing information.
   ~~3.~~c. If the Board ~~Office~~ office does not provide the applicant with written notice regarding administrative completeness, the application ~~packet~~ form shall be deemed complete ~~20~~ 60 days after receipt by the Board ~~Office~~ office.

~~**D.**~~2. An applicant with an incomplete application ~~packet~~ form shall submit to the Board ~~Office~~ office all of the missing information within ~~60~~ 90 days of service of the notice of incompleteness.
   ~~1.~~a. If an applicant cannot submit all missing information within ~~60~~ 90 days of service of the notice of incompleteness, the applicant may ~~obtain an extension by submitting a written request to the Board Office postmarked or delivered within 60 days of service of the notice of incompleteness.~~ send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness;
   ~~2.~~b. The written request for an extension shall document the reasons the applicant is unable to meet the ~~60~~ 90-day deadline~~.~~; and
   ~~3.~~c. The Board ~~Office~~ office shall review the request for an extension of the ~~60~~ 90-day deadline and grant the request if the Board ~~Office~~ office determines that an extension of the ~~60~~ 90-day deadline will enable the applicant to assemble and submit the missing information. An extension ~~of the 60-day deadline~~ shall be for no more than ~~60~~ 30 days. ~~An applicant that requires an additional extension shall submit an additional written request in accordance with this subsection.~~ The Board ~~Office~~ office shall notify the applicant in writing of its decision to grant or deny the request for an extension.

~~**E.**~~3. If an applicant fails to submit a complete application ~~packet~~ form within the time allowed, the Board ~~Office~~ office shall close the applicant's file. An applicant whose file ~~has been~~ is closed and who later wishes to obtain a permit shall ~~apply again in accordance with subsection (A)~~ submit a new application and fee as specified in subsection (A).

~~**F.**~~4. For a nonprescription drug permit applicant, a compressed medical gas distributor permit applicant, and a durable medical equipment and compressed medical gas supplier permit applicant, the Board ~~Office~~ office shall issue a permit on the day that the Board ~~Office~~ office determines an administratively complete application ~~packet~~ form is received.

~~**G.**~~5. Except as described in subsection ~~(F)~~ (C)(4), from the date on which the administrative completeness review of an application ~~packet~~ form is finished, the Board ~~Office~~ office shall complete a substantive review of the applicant's qualifications in no more than 120 days.
   ~~1.~~a. If an applicant is found to be ineligible, the Board ~~Office~~ office shall issue a written notice of denial to the applicant~~;~~.
   ~~2.~~b. If an applicant is found to be eligible, the Board ~~Office~~ office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board ~~Office's~~ office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board ~~Office~~ office.
   ~~3.~~c. If the Board ~~Office~~ office finds deficiencies during the substantive review of the application ~~packet~~ form, the Board ~~Office~~ office shall issue a written request to the applicant for additional documentation.
   ~~4.~~d. The 120-day time-frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received. The appli-

cant shall submit the additional documentation according to subsection (C)(2).

5.e. ~~When~~ If the applicant and the Board ~~Office~~ office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than ~~35~~ 45 days.

~~H.~~6. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for permits~~.~~:

~~1.~~a. Administrative completeness review time-frame: ~~20~~ 60 days.

~~2.~~b. Substantive review time-frame:

~~a.~~i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: none~~;~~.

~~b.~~ii. Except as described in subsection ~~(H)(2)(a)~~ (C)(6)(b)(i): 120 days.

~~3.~~c. Overall time-frame:

~~a.~~i. ~~Nonprescription drug permit: 20 days;~~ Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: 60 days.

~~b.~~ii. Except as described in subsection ~~(H)(3)(a): 140 days~~ (C)(6)(c)(i): 180 days.

D. Permit renewal.

1. To renew a permit, a permittee shall submit a completed application for permit renewal electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(D).
2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1931, the permit is suspended. The permittee shall pay a penalty fee as provided in A.R.S. § 32-1931 and R4-23-205(G)(2) to vacate the suspension.
3. Time-frames for permit renewals. The Board office shall follow the time-frames established in subsection (C).

E. Display of permit. A permittee shall conspicuously display the permit in the location to which it applies.

R4-23-603. Resident-Nonprescription Drugs, Retail

A. Permit. A person, including the following, shall not sell or distribute a nonprescription drug without a current Board-issued permit:

1. A grocer;
2. Other non-pharmacy retail outlet; or
3. Mobile or non-fixed location retailer, such as a swap-meet vendor.

B. A medical practitioner licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).

C. Application. To obtain a permit to sell a nonprescription drug, a person shall submit ~~a completed application, on a form furnished by the Board, that includes~~:

1. ~~Whether applying for Category I or Category II permit;~~ A completed application form and fee as specified in R4-23-602; and
2. ~~Business name, address, mailing address, if different, telephone number, and facsimile number;~~ Documentation of compliance with local zoning laws, if required by the Board.
3. ~~Owner's name, if corporation or partnership, officers or partners, including address and title;~~
4. ~~Date business started or planned opening date;~~
5. ~~Documentation of compliance with local zoning laws;~~
6. ~~Type of business, such as convenience, drug, grocery, or health food store, swap-meet vendor, or vending machine;~~
7. ~~If application is submitted because of ownership change, former owner's name and business name, if different;~~
8. ~~Date signed, applicant's verified signature; and~~
9. ~~Fee specified in R4-23-205.~~

D. Drug sales~~:~~. A nonprescription drug permittee:

1. Shall sell a drug only in the original container packaged and labeled by the manufacturer; and
2. Shall not package, repackage, label, or relabel any drug.

E. Inspection. A nonprescription drug permittee shall consent to inspection during business hours by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § ~~32-1901(4)~~ 32-1901(5).

F. Quality control. A nonprescription drug permittee shall:

1. Ensure that all drugs stocked, sold, or offered for sale are:
   a. Kept clean;
   b. Protected from contamination, excessive heat, cold, sunlight, and other deteriorating factors; ~~and~~
   c. ~~Comply~~ In compliance with federal law; and
   d. Received from a supplier with a current Board-issued permit as specified in R4-23-601(A).
2. Develop and implement a program to ensure that:
   a. Any expiration-dated drug is reviewed regularly;
   b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
   c. Any quarantined drug is destroyed or returned to its source of supply.

G. Notification. A nonprescription drug permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or

name of business.

H. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (C).

I. Relocation. No less than 30 days before an existing nonprescription drug permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (C).

J. Records. A nonprescription drug permittee shall:

1. Retain records of the receipt and disposal of nonprescription drugs as required in R4-23-601(D), and
2. Comply with the requirements of A.R.S. § 32-1977 and federal law for the retail sale of methamphetamine precursors.

K. Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

~~G.~~L. Nonprescription drug vending machine outlet. In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through ~~(F)~~ (K), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:

1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, and telephone contact number~~, and permit expiration date~~;
3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § ~~32-1901(4)~~ 32-1901(5) as follows:
   a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
   b. The Board compliance staff shall have independent access to the vending machine;
6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:
   a. Permit number;
   b. Vending machine's serial number;
   c. Action planned (relocate or retire); and
   d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;
7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited ~~unless the nonprescription drug permittee provides written proof to the Board of compliance with the requirements of A.R.S. §§ 13-3401, 13-3404, and 13-3404.01~~; and
8. Under no circumstance may expired drugs be sold or distributed ~~for human or animal consumption~~.

R4-23-606. Resident Pharmacy Permit~~;~~: Community, Hospital, and Limited Service

A. Permit. A person shall not operate a pharmacy in Arizona without a current Board-issued pharmacy permit.

B. Application.

1. To obtain a permit to operate a ~~new pharmacy or change ownership, relocate, or remodel an existing~~ pharmacy in Arizona, a person shall submit a completed application~~, on a form furnished by the Board,~~ form and fee as specified in R4-23-602 that includes:
   a. ~~The type of pharmacy~~ Documentation of compliance with local zoning laws, if required by the Board;
   b. ~~Business name, address, mailing address, if different, telephone number, and facsimile number~~ A detailed floor plan showing proposed pharmacy area including size and security;
   c. ~~Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;~~ A copy of the lease agreement, if applicable; and
   d. ~~Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;~~ A disclosure statement indicating whether a medical practitioner will receive compensation, either directly or indirectly, from the pharmacy.
   e. ~~Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;~~

f. ~~Whether the owner, any officer, or active partner has ever been denied a pharmacy permit in this state or any other jurisdiction, and if so, indicate where and when;~~
g. ~~Whether the owner, any officer, or partner is a medical practitioner;~~
h. ~~Name and telephone number of individual to contact before opening;~~
i. ~~If applying for a hospital pharmacy permit, the hospital's Department of Health Services license number, number of beds, and manager's or administrator's name;~~
j. ~~Planned opening, change of ownership, relocation, or remodel date;~~
k. ~~Plans or construction drawings showing pharmacy size and security for the proposed business;~~
l. ~~Documentation of compliance with local zoning laws;~~
m. ~~Lease agreement and a disclosure statement indicating whether a medical practitioner receives income from the lease;~~
n. ~~Pharmacist-in-charge's name;~~
o. ~~For an application submitted because of ownership change, the former pharmacy's name, address, owner's name, and permit number;~~
p. ~~Date signed, applicant's, corporate officer's, partner's, manager's, administrator's, or pharmacist-in-charge's verified signature and title; and~~
q. ~~Fee specified in R4-23-205.~~

2. Before issuing a pharmacy permit, the Board shall:
   a. Receive and approve a completed permit application; and
   b. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
3. Before issuing a pharmacy permit, the Board may interview the applicant and the pharmacist-in-charge, if different from the applicant, at a Board meeting based on the need for additional information.

C. Notification. A pharmacy permittee shall notify the Board office within ten days of changes involving the type of pharmacy operated, ~~pharmacy area, ownership, address,~~ telephone number, facsimile number, e-mail address, mailing address, name of business, ~~pharmacist-in-charge,~~ or staff pharmacist. A pharmacy permittee shall provide the Board office immediate notice of a change of the pharmacist-in-charge.

D. If any nonprescription drugs are sold outside the pharmacy area when the pharmacy area is closed, the pharmacy permittee shall ensure that the business has a current, Board-issued nonprescription drug permit as required in ~~Sections R4-23-602 and~~ Section R4-23-603.

E. Change of ownership. ~~Before any change of ownership occurs, a prospective owner shall submit the application packet described under subsection R4-23-606(B), except for changes of stock ownership of less than 30% of the voting stock of a corporation or an existing and continuing corporation that is actively traded on any securities market or over-the-counter market.~~ No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).

F. ~~Before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit the application packet described under subsection R4-23-606(B), except a fee is not required. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.~~ Relocation or remodel.

1. No less than 30 days before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit a completed application for remodel or relocation electronically or manually on a form furnished by the Board.
   a. An application for relocation shall include the documents required by subsections (B)(1)(a) through (d).
   b. An application for remodel shall include the document required by subsection (B)(1)(b).
2. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.

G. ~~A pharmacy permittee shall submit the application packet described under subsection R4-23-606(B) for any change of officers in a corporation, except a fee and final inspection are not required.~~ Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident

A. Permit~~:~~.

1. A person shall not manufacture, process, transfill, package, or label a compressed medical gas ~~before a compressed medical gas distributor permit is issued by the Board or its designee following a satisfactory final inspection by a Board compliance officer.~~ in Arizona, or manufacture, process, transfill, package, or label a compressed medical gas outside Arizona and ship into Arizona without a current Board-issued resident or nonresident compressed medical gas distributor permit.
2. Before operating as a compressed medical gas distributor, a person shall register with the FDA as a medical gas manufacturer and comply with the drug listing requirements of the federal act.
3. ~~To obtain a compressed medical gas distributor permit a person shall submit a completed application, on a form furnished by the Board, to the Board's office.~~
4. ~~A compressed medical gas distributor permittee shall distribute a compressed medical gas only:~~

~~a. Pursuant to a compressed medical gas order; and~~
~~b. If the compressed medical gas is listed on the distributor's permit application. To receive approval to distribute an additional compressed medical gas, the permittee shall request that the permit application be amended.~~
~~i. The permittee shall send a written request to amend the permit application to the Board office.~~
~~ii. The request shall include documentation that the FDA has approved manufacture of the additional compressed medical gas not listed on the original permit application.~~
~~iii. If a request to amend an original permit application includes the documentation referenced in subsection (A)(4)(b)(ii) and if the Board or its designee determines that the amendment is in the interest of public health and safety, the Board or its designee shall approve the request to amend within 30 days of receipt.~~
~~5. A compressed medical gas distributor permit is subject to denial, suspension, or revocation under A.R.S. § 32-1927.02.~~

~~**B.** Current Good Manufacturing Practice: A compressed medical gas distributor permittee shall comply with the current good manufacturing practice requirements of 21 CFR 210 through 211, published April 1, 2011, (and no future amendments or editions), incorporated by reference and on file with the Board.~~

~~**C.** Records: A compressed medical gas distributor permittee shall establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law.~~
~~1. A permittee shall retain the records required by this Article and 21 CFR 210 through 211 for at least two years after distribution of the compressed medical gas or one year after the expiration date of the compressed medical gas, whichever is longer.~~
~~2. A permittee shall make the records required by this Article and 21 CFR 210 through 211 available within 48 hours for review by the Board, its compliance officers, or the FDA.~~

~~**D.** Inspections: A permittee shall make the compressed medical gas distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.~~

B. Application. To obtain a resident or nonresident CMG distributor permit, a person shall submit a completed application form and fee as specified in R4-23-602.
1. A resident CMG distributor permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident CMG distributor permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

C. Notification. A resident or nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.

D. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).

E. Relocation.
1. No less than 30 days before an existing resident CMG distributor permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
2. A nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.

F. A resident or nonresident CMG distributor permittee shall sell or distribute a compressed medical gas pursuant to a compressed medical gas order only to durable medical equipment and compressed medical gas suppliers and other entities that are registered, licensed, or permitted to use, administer, or distribute compressed medical gases.

G. Facility. A resident or nonresident CMG distributor permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access.

H. Current Good Manufacturing Practice: A resident or nonresident CMG distributor permittee shall comply with the current good manufacturing practice requirements of 21 CFR parts 210 and 211, (Revised April 1, 2013, incorporated by reference and on file with the Board and available at www.gpo.gov. This incorporated material includes no future editions or amendments).

I. Records: A resident or nonresident CMG distributor permittee shall establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, returns, recalls, training of personnel, complaints, and any information required by federal or state law.
1. A permittee shall retain the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 for not less than three years or one year after the expiration date of the compressed medical gas, whichever is longer.
2. A permittee shall make the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart

from the inspection location and not electronically retrievable, shall provide the records within four working days of a request by the Board or its compliance officer.

J. Inspection.

1. A resident CMG distributor permittee shall make the CMG distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within ten days from the date of a request by the Board or its staff, a nonresident CMG distributor permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority or the FDA, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

K. Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

L. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

R4-23-693. ~~Compressed Medical Gas Supplier~~ Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident

~~**A.** Permit:~~

~~1. A person shall not supply a compressed medical gas before a compressed medical gas supplier permit is issued by the Board or its designee following a satisfactory final inspection by a Board compliance officer.~~
~~2. To obtain a compressed medical gas supplier permit a person shall submit a completed application, on a form furnished by the Board, to the Board's office.~~
~~3. A compressed medical gas supplier permittee shall supply a compressed medical gas only:~~
~~a. Pursuant to a compressed medical gas order, and~~
~~b. To the consumer, patient, or agent of the consumer or patient for whom the compressed medical gas order is written.~~
~~4. A compressed medical gas supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as set forth in subsection (B)(2).~~

~~**B.** Records: A compressed medical gas supplier permittee shall establish and implement written procedures for maintaining records pertaining to acquisition and distribution of, and complaints related to, compressed medical gases.~~

~~1. A permittee shall ensure that a compressed medical gas order is obtained and filed for each compressed medical gas container supplied by the permittee.~~
~~2. A permittee shall ensure that each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the compressed medical gas supplier.~~
~~3. A permittee shall retain the records required by this Article for at least two years after supplying the compressed medical gas or one year after the expiration date of the compressed medical gas, whichever is longer.~~
~~4. A permittee shall make the records required by this Article available within 48 hours for review by the Board or its compliance officers.~~

~~**C.** Inspections: A permittee shall make the compressed medical gas supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.~~

A. Permit. A person shall not sell, lease, or supply durable medical equipment or a compressed medical gas to a patient or consumer in Arizona for use in a home or residence without a current Board-issued resident or nonresident durable medical equipment and compressed medical gas supplier permit.

1. The permit requirements of this Section shall not apply to the following unless there is a separate business entity engaged in the business of providing durable medical equipment or a compressed medical gas to a patient or consumer for use in a home or residence:
   a. A medical practitioner licensed under A.R.S. Title 32;
   b. A hospital, long-term care facility, hospice, or other health care facility using durable medical equipment or a compressed medical gas in the normal course of treating a patient; and
   c. A pharmacy.
2. Nothing in this Section shall be construed to prohibit a person with a current Board-issued nonprescription drug permit from the retail sale of nonprescription drugs or devices.

B. Application. To obtain a resident or nonresident DME and CMG supplier permit, a person shall submit a completed application form and fee as specified in R4-23-602.

1. A resident DME and CMG supplier permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident DME and CMG supplier permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

C. Notification. A resident or nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, email address,

mailing address, or name of business.

D. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).

E. Relocation.

1. No less than 30 days before an existing resident DME and CMG supplier permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
2. A nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.

F. Orders. A resident or nonresident DME and CMG supplier shall sell, lease, or provide:

1. Durable medical equipment that is a prescription-only device as defined in A.R.S. § 32-1901(75) only pursuant to a prescription order or medication order from a medical practitioner; and
2. A compressed medical gas only pursuant to a compressed medical gas order from a medical practitioner.

G. Restriction. A DME and CMG supplier permit shall authorize the permittee to procure, possess, and provide a prescription-only device or compressed medical gas to a patient or consumer as specified in subsection (F). A DME and CMG supplier permit does not authorize the permittee to procure, possess, or provide narcotics or other controlled substances, prescription-only drugs other than compressed medical gases, precursor chemicals, or regulated chemicals.

H. Facility. A resident or nonresident DME and CMG supplier permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access. A permittee shall maintain separate and identified storage areas in the facility and in the delivery vehicles for clean, dirty, contaminated, or damaged durable medical equipment or compressed medical gases.

I. A resident or nonresident DME and CMG supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as set forth in subsection (J).

J. Records. A resident or nonresident DME and CMG supplier permittee shall establish and implement written procedures for maintaining records pertaining to acquisition, distribution, returns, recalls, training of personnel, maintenance, cleaning, and complaints. A permittee shall:

1. Ensure that a prescription order, medication order, or compressed medical gas order is obtained as specified in subsection (F);
2. Ensure that each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the permittee;
3. Ensure that all appropriate warning labels are present on the durable medical equipment or compressed medical gas;
4. Retain the records required by Section R4-23-601 and this Section for not less than three years, or if supplying a compressed medical gas, one year after the expiration date of the compressed medical gas, whichever is longer; and
5. Make the records required by Section R4-23-601 and this Section available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable for inspection, shall provide the records within four working days of a request by the Board or its staff.

K. Inspection.

1. A resident DME and CMG supplier permittee shall make the DME and CMG supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within ten days from the date of a request by the Board or its staff, a nonresident DME and CMG supplier permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

L. Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

M. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

PREAMBLE

[R14-86]

1. Articles, Parts, and Sections Affected (as applicable) — **Rulemaking Action**

R2-5.1-101	Amend
R2-5.1-102	Amend
R2-5.1-103	Amend
R2-5.1-104	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-782(C)

Implementing statute: A.R.S. §§ 41-781, 41-782, 41-783, and 38-531, 38-532, 38-533, 38-534

3. Effective date of the rules:

August 3, 2014

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 19 A.A.R. 1742, July 5, 2013
Notice of Proposed Rulemaking: 19 A.A.R. 2598, August 23, 2013
Notice of Oral Proceeding on Proposed Rulemaking: 19 A.A.R. 2797, September 6, 2013
Notice of Public Information: 20 A.A.R. 616, March 7, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name:	Laurie Barcelona
Address:	State Personnel Board 1400 W. Washington St., Suite 280 Phoenix, AZ 85007-2939
Telephone:	(602) 542-3888
Fax:	(602) 542-3588
E-mail:	laurie.barcelona@personnel.az.gov
Web site:	www.personnel.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

In response to a Five-Year Review report approved by the Governor's Regulatory Review Council on May 7, 2013, the Personnel Board decided to make some changes to its rules. The changes include amending the Board's rules to make them more clear, concise, understandable and consistent with statute and Board practices; deleting repetitive and unnecessary language; adding, amending, and defining more terms used in the rules; combining or deleting subsections; adding language allowing the use of electronic means to distribute documents; adding language that will clarify procedures related to burden of proof, failure to appear for hearings, exchanging exhibits and witness lists, requesting and serving subpoenas, utilizing telephonic testimony, withdrawing appeals and complaints, requesting a change of hearing officer, and time requirements for hearings. The rulemaking will reorganize subsections to allow for a better flow of information.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed or relied upon by the Board relevant to the rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The preliminary summary of the economic, small business, and consumer impact:

It is anticipated that the rules will not impact small businesses or consumers since the proposed rulemaking is intended to clarify existing appeal and complaint processes already being following by the Board. It will not impose any reporting, bookkeeping, or compliance requirements on small businesses. The proposed rules' impact on the Board, the Secretary of State's Office, and the Governor's Regulatory Review Council for the rulemaking process will be the usual rulemaking-related costs, which are minimal. The public will benefit because the rules will be less confusing to apply and will reduce monies spent on postage for those using the electronic document filing option.

10. Describe the changes made to the rules between proposed and final revisions:

The paragraph regarding exhibits was rewritten to remove the requirement to supply the hearing officer with copies of exhibits 10 days prior to a hearing. The rewrite also removed the admonition that if a party failed to produce a document within the 10 day time-frame, they would be precluded from utilizing the document at hearing. Language was added to the paragraph regarding the requirement of the parties to supply two copies of exhibits at the hearing which is consistent with current practice. New language was added to the paragraph to allow the hearing officer the discretion to allow additional evidence if needed for a complete record and clarifying language as to the balance provided by the hearing officer to that additional evidence due to possible prejudice to the parties.

The language “at the hearing” was removed from the paragraph regarding the issuance of a subpoena duces tecum for production of documents.

The Board made the following clarifying changes per the suggestions of GRRC staff:

R2-5.1-101

12. Simplified the definition for subpoena duces tecum.

R2-5.1-103

E. Clarified days as “business” to allow more time for filing the request.

H. Clarified days as “calendar” and gave examples of what “good cause” means.

I. Clarified “substantial rights” as “due process rights” and changed “ascertains” to “promotes and upholds.”

L. Clarified days as “calendar,” added the hearing officer determines whether additional evidence is necessary, and added clarifying language for undue prejudice to the parties.

O. Added the information regarding the Department of Administration General Accounting Office website for travel reimbursement.

P. Defined “undue prejudice” and added the hearing officer determines whether telephonic testimony would be warranted.

V. Simplified the time-frame for responses to objections.

R2-5.1-104

F. Clarified days as “business” to allow more time for filing the request.

I. Clarified days as “calendar” and gave examples of what “good cause” means.

J. Clarified “substantial rights” as “due process rights” and changed “ascertains” to “promotes and upholds.”

M. Clarified days as “calendar,” added the hearing officer determines whether additional evidence is necessary, and added clarifying language for undue prejudice to the parties.

P. Added the information regarding the Department of Administration General Accounting Office website for travel reimbursement.

Q. Defined “undue prejudice” and added the hearing officer determines whether telephonic testimony would be warranted.

W. Simplified the time-frame for responses to objections.

11. Summarize the principal comments received from the public and the agency's response to the comments:

The changes reflected in #10 above were in response to the comments received from the public, both in written form and during the oral proceedings held on October 16, 2013.

The comments related to the subpoena duces tecum for documentation being issued at the hearing or 10 days prior to the hearing, and that the hearing officer should not receive copies of exhibits from the parties prior to the hearing.

The Board's response to the comments was to remove the “at the hearing” provision in the portion of the rule regarding the issuance of a subpoena duces tecum for documentation, and the paragraph regarding exhibits was rewritten to indicate the parties would exchange exhibits 10 days prior to the hearing but would not provide copies to the hearing officer until the scheduled hearing date. This was done so as not to prejudice the hearing officer by having him or her review exhibits prior to the hearing.

One other person made comments related to police officers and that the hearings held before the Personnel Board or similar bodies were the first meaningful opportunity to see the evidence against them. Mr. Bolton requested the Board

keep that in mind and ensure due process is provided. The Board asked Mr. Bolton whether he agreed with the comments that were made by the other parties in attendance at the meeting; Mr. Bolton agreed with the comments. Those comments were addressed in the paragraph above by the Personnel Board.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit, general or otherwise.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of a federal law:

There is no corresponding federal law directly applicable to the subject matter of these rules. The rules are being promulgated under state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on the business in other states:

No person submitted an analysis.

13. Material incorporated by reference:

Not applicable. No material was incorporated by reference.

14. Specify whether the rule was previously made as an emergency rule. If yes, specify whether any changes to the rule between adoption as an emergency rule and this final rule were made:

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R2-5.1-101. Definitions
R2-5.1-102. Personnel Board Procedures
R2-5.1-103. Appeal Procedures
R2-5.1-104. Complaint Procedures

ARTICLE 1. GENERAL PROVISIONS

R2-5.1-101. Definitions

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency" for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41-741.
2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee ~~who believes a prohibited personnel action was taken against the employee or former employee as a result of the employee's or former employee's disclosure of information under A.R.S. § 38-532~~.
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness ~~is~~ given under oath or affirmation~~,~~ and subject to cross-examination~~, and~~ is recorded in writing~~, before~~ prior to a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to ~~be heard by~~ present oral or written ~~presentation of~~ evidence.

9. "Hearing officer" means a person ~~employed or~~ appointed by the Board, ~~the Board, the Boards chair, or~~ including any member of the Board~~, designated by the Board's chair acting~~ to act as the trier of fact.
10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. "Subpoena" means a ~~formal~~ legal document issued under authority of the Board to compel the appearance of a witness at a hearing.
12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness to appear and to bring specified documents, records, or things.

R2-5.1-102. Personnel Board Procedures

A. ~~Regular meetings~~ Meetings. ~~At each public meeting, the~~ The Board shall ~~announce the time~~ provide public notice of the date, time, and place of its ~~next regular~~ monthly ~~meeting~~ meetings and any special, emergency, or other meetings it deems necessary. The Board shall give notice as required by law.

~~**B.** Special meetings. The chair of the Board may call special meetings of the Board. The Board shall give notice as required by law.~~

~~**C.** Emergency meetings. In the case of an emergency, the chair or vice chair of the Board may call a meeting. The Board shall give notice as required by law.~~

~~**D**~~**B.** Agenda. ~~The Board shall consider only matters placed on the agenda.~~ The agenda shall be mailed or electronically provided, as required by law, to each member of the Board, ~~at least five business days before the meeting~~ a state agency indicating an interest in receiving the agenda, and all parties in a matter scheduled for a Board meeting. The Board's failure to mail or electronically provide the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.

~~**E.** Notice to agencies. At least five business days before a meeting, the Board shall mail a copy of the agenda to a state agency indicating an interest in receiving the agenda. The Board's failure to mail the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.~~

~~**F.** Notice to parties. The Board shall give notice of a meeting as required by law to all parties in a matter scheduled for a Board meeting.~~

~~**G**~~**C.** Minutes. The Board shall record in the Board's minutes the date, time, and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall ~~write the minutes and shall~~ prepare and present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant, complainant, and respondent within seven days of the regular meeting at which the minutes are approved.

R2-5.1-103. Appeal Procedures

A. Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days ~~from~~ after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783. The appeal shall include:
1. The appellant's name, ~~address, and~~ telephone number, address and e-mail address, if applicable;
2. The name of the agency taking the disciplinary action being appealed;
3. The name, telephone number, address, and e-mail address ~~telephone number~~ of the appellant's representative, if applicable;
~~4. The action requested of the Board; and~~
~~5.~~4. specific response to the causes for disciplinary action upon which the appeal is based; and~~.~~
5. The action requested of the Board.

B. Change of address. ~~A party~~ An appellant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the appellant's or respondent's prior address shall be deemed to have been received.

C. Routing of appeal. The Board shall provide a copy of an appeal to the respondent ~~at the respondent's last known address~~ within five business days from the date of filing, and not less than 20 days before the hearing.

D. Hearing officer. The Board, including any member of the Board, ~~or the Board's chair~~ may assign an appeal or may direct staff ~~administratively~~ to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is ~~fully~~ empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, ~~or the Board's chair~~ from withdrawing the assignment and the Board conducting the hearing ~~itself~~ or from reassigning the appeal to another hearing officer.

~~**E.** Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of~~

~~law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last date of the hearing.~~

~~**F.** Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the appeal by the Board, and, if requested, shall assist and advise the Board.~~

~~**G.** Time for hearing. The Board shall hold a hearing on an appeal within 30 days from receipt by the Board of an appeal unless the Board finds good cause to extend the time.~~

~~**H.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name of the hearing officer at least 20 days before the date of the hearing.~~

~~**I.** Nature of hearing; rules of evidence. Every hearing shall be open to the public unless the appellant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.~~

~~**J.** Prehearing conference. The Board or the Board's hearing officer may require the appellant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.~~

~~**K.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.~~

~~**L.** Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.~~

~~**M.** Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.~~

~~**N.** Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.~~

~~**O.** Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request~~

~~**P.** Proposed findings of fact. Both appellant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the appellant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection (F).~~

~~**Q.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant or respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.~~

~~**R.** Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the time and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determines to be proper.~~

~~**S.** Appeal of Board decision in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.~~

E. Change of hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the rea-

sons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

F. Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

G. Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

H. Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within 30 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

I. Nature of hearing. Every hearing shall be open to the public unless the appellant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. The respondent has the burden of proof and shall present its case first.

J. Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

K. Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

L. Exhibits. A party introducing an exhibit shall furnish the opposing party with a copy of the exhibit no later than 10 calendar days prior to the hearing. Both parties should be prepared with two additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

M. Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

N. Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

O. Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

P. Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

Q. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

R. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.

S. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and,

if requested, the hearing officer shall assist and advise the Board.

T. Proposed findings of fact. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

U. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

V. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

W. Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.

X. State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.

Y. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

R2-5.1-104. Complaint Procedures

A. Complaint. ~~A state~~ An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than ~~ten~~ 10 calendar days ~~from~~ after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:

1. The complainant's name, ~~address, and~~ telephone number, address, and e-mail address, if applicable;
2. The name, telephone number, address, and e-mail address of the complainant's representative, if applicable;
~~2.~~3. A ~~clear and~~ concise statement of the facts constituting the alleged prohibited personnel practice;
~~3.~~4. The name of the ~~state~~ agency or ~~state~~ employee believed to have knowingly committed the prohibited personnel practice; and
~~4.~~5. The date and place of the alleged prohibited personnel practice~~; and~~.
~~5. The name, address, and telephone number of the complainant's representative, if applicable.~~

B. Change of address. A ~~party~~ complainant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the complainant's or respondent's prior address shall be deemed to have been received.

C. Routing of complaint. The Board shall provide a copy of a complaint to the respondent ~~at the respondent's last known address~~ within five business days from the date of filing, and not less than 20 days before the hearing.

D. Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.

E. Hearing officer. The Board, including any member of the Board, ~~or the Board's chair~~ may assign a complaint or may direct staff ~~administratively~~ to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is ~~fully~~ empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, ~~or the Board's chair~~ from withdrawing the assignment and the Board conducting the hearing ~~itself~~ or from reassigning the complaint to another hearing officer.

~~**F.** Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last~~

~~date of hearing.~~

~~**G.** Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the complaint by the Board, and, if requested, shall assist and advise the Board.~~

~~**H.** Time for hearing. The Board shall hold a hearing on a complaint within 30 days from receipt by the Board of a complaint unless the Board finds good cause to extend the time.~~

~~**I.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name of the hearing officer at least 20 days before the date of the hearing.~~

~~**J.** Notice of hearing; rules of evidence. Every hearing shall be open to the public unless the complainant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.~~

~~**K.** Prehearing conference. The Board or the Board's hearing officer may require the complainant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.~~

~~**L.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.~~

~~**M.** Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.~~

~~**N.** Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.~~

~~**O.** Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.~~

~~**P.** Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.~~

~~**Q.** Proposed findings of fact. Both complainant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the complainant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection (G).~~

~~**R.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant or respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.~~

~~**S.** Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the time and place of the Board meeting at which the complaint will be decided. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. If the Board determines a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.~~

~~**T.** Appeal of Board decision in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.~~

F. Change of hearing officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

G. Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

H. Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

I. Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within 30 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

J. Nature of hearing. Every hearing shall be open to the public unless the complainant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. The complainant has the burden of proof and shall present its case first.

K. Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

L. Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

M. Exhibits. A party introducing an exhibit shall furnish the opposing party with a copy of the exhibit no later than 10 calendar days prior to the hearing. Both parties should be prepared with two additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

N. Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

O. Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

P. Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

Q. Telephonic testimony. The complainant or respondent may request through a motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

R. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

S. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.

T. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist and advise the Board.

U. Proposed findings of fact. Complainant and respondent may request permission to file proposed findings of fact and con-

clusions of law. The hearing officer shall grant or deny the request.

V. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

W. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

X. Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request.

Y. State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

Z. Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.